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Attorney Docket: 07737.8056

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X  
X/Open Company Limited,

Opposer/Registrant,

v.

Wayne R. Gray,

Applicant/Petitioner.  
-----X



05-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Opposition No. 91122524

**OPPOSER'S/REGISTRANT'S ANSWER TO  
APPLICANT'S/PETITIONER'S SECOND AMENDED COUNTERCLAIM**

X/Open Company Limited ("X/Open") answers Applicant's/Petitioner's second amended counterclaim as follows:

1. X/Open admits that Applicant/Petitioner filed Application Serial No. 75/680,034 to register the mark INUX. X/Open denies that this application was filed for "computer operating system software for use in consumer hardware systems." X/Open is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations and inferences contained in paragraph 1 of Applicant's/Petitioner's counterclaim and, therefore, denies them.

2. X/Open admits that it is the assignee of Registration No. 1,392,203, filed June 24, 1985, registered May 6, 1986, for "computer programs" in Class 9, and Registration No. 1,390,593, filed May 13, 1985, registered April 22, 1986 for "computers" in Class 9, and has filed Opposition No. 91122524 against Petitioner's

Application. X/Open denies all other allegations and inferences contained in paragraph 2 of Applicant's/Petitioner's counterclaim.

3. Denied.

4. Denied.

5. To the extent this allegation can be understood, X/Open admits that it does not produce and market the products of its licensees identified under its UNIX mark. X/Open denies all other allegations and inferences contained in paragraph 5 of Applicant's/Petitioner's counterclaim.

6. Denied. X/Open has never ceased using its UNIX mark.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. X/Open admits that Novell granted X/Open an exclusive license to use the UNIX mark in an agreement dated May 10, 1994, and subsequently assigned the UNIX mark to X/Open pursuant to that agreement. X/Open denies all other allegations and inferences contained in paragraph 14 of Applicant's/Petitioner's counterclaim.

To the extent Applicant's/Petitioner's "WHEREFORE" contains any new allegations not set forth above, X/Open denies them.

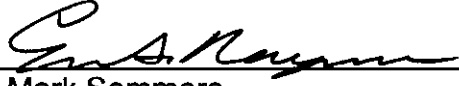
**AFFIRMATIVE DEFENSES TO COUNTERCLAIM**

1. Applicant's/Petitioner's counterclaim is barred by the doctrine of laches.
2. Applicant's/Petitioner's counterclaim is barred by the doctrine of acquiescence.
3. Applicant's/Petitioner's counterclaim is barred because Applicant/Registrant has unclean hands.
4. Applicant's/Petitioner's counterclaim is barred because it is not supported by existing law and/or does not have evidentiary support.
5. Applicant's/Petitioner's counterclaim fails to state a claim upon which relief can be granted.

Respectfully submitted,

X/OPEN COMPANY LIMITED

Dated: May 12, 2004

By:   
Mark Sommers  
Linda K. McLeod  
Evan A. Raynes

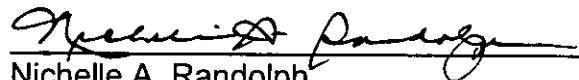
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of OPPOSER'S/REGISTRANT'S ANSWER TO APPLICANT'S/PETITIONER'S SECOND AMENDED COUNTERCLAIM was served via first-class mail, postage prepaid and faxed on May 12, 2004, upon counsel for Applicant/Petitioner to the following address and facsimile number:

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